

REAL ESTATE COMMISSION MEETING

Heber M. Wells Building

Room 210

9:00 a.m.

June 21, 2017

MINUTES

DIVISION STAFF PRESENT:

Jonathan Stewart, Division Director
Mark Fagergren, Education and Licensing Director
Kadee Wright, Chief Investigator
Justin Barney, Hearing Officer
Elizabeth Harris, Assistant Attorney General*
Eric Stott, Real Estate Analyst
Amber Nielsen, Board Secretary
Jennica Gruver, Real Estate Education Coordinator
Van Kagie, Investigator
Kurtis Hughes, Investigator
Mark Schaerrer, Investigator
Sarah Nicholson, Investigator
Chris Martindale, Investigator
Teresa Larsen, Investigator
Lacey Vawdrey, Division Staff
Connie Mickles, Division Staff
Faruk Halilovic, Division Staff

*Arrived at 9:23 a.m.

COMMISSION MEMBERS PRESENT:

Lerron Little, Chair
Lori Chapman, Vice Chair
Russell K. Booth, Commissioner
William O. Perry, IV, Commissioner**

*Arrived at 9:07 a.m.

GUESTS:

Brian Swan	Kreg Wagner
Heather Swanger	Dan Naylor
Shane Norris	Jason Almond
Doug Gubler	Tara Issacson
Robert Blackwood	Joe Holland
Shawn Burnett	Alma Jamison
Bill Jamison	Sarah Blackwood
Erin Holmes	

The June 21, 2017 meeting of the Utah Real Estate Commission began at 9:01 a.m.

with Chair Little conducting. Commissioner Musselman was excused from today's meeting. Commissioner Perry was absent from the start of the meeting.

PLANNING AND ADMINISTRATIVE MATTERS

Approval of Minutes – A motion was made and seconded to approve the minutes as written from the May 10, 2017 meeting of the Commission. Vote: Chair Little, yes; Vice Chair, Chapman, yes; Commissioner Booth, yes. The motion was approved.

There was no Public Comment at this time.

DIVISION REPORTS

DIRECTOR'S REPORT – Jonathan Stewart

Director Stewart reported Vice Chair Chapman has completed her first term on the Commission. She has been approved by the Governor and confirmed by the Senate for a second term. She will be sworn in at the next live meeting.

Director Stewart reported he spoke with Michael Hebert regarding the rules regarding auctions. The use of the word affiliate in the auction rules could cause problems; the Commission could define the word affiliate in the rules for auctions or use a different term. He also noted it requires a broker to supervise or oversee an auction, which needs some clarification on those duties. As the Division gets more information and discusses the changes internally, the Division will draft some language for the Commission to consider. Chair Little asked if there are any problems with the language that have come up. Director Stewart stated there is at least one lawsuit that the Division is aware of which deals specifically with some of the language.

Director Stewart discussed Broker Supervision. He mentioned when the discussion was held to expand the supervision for brokers to allow a principal broker to oversee their office and up to two additional branch locations and a branch broker to oversee up to three branch locations, they discussed clarifying or looking at the requirements of a branch broker to make sure that the branch broker is supervising. He briefly outlined the current requirements for broker supervision in the statute and the rules for additional provisions. There is nothing currently specific to a branch broker; they all outline the requirements for a principal broker. He stated there are a few options. The first is to leave everything as it is; there is already enforcement authority for failure to supervise. They could add another section with something at the bottom of the additional provisions of a principal broker that says a branch broker is also required to fulfill all these responsibilities unless there's an agreement with the principal broker that details what the principal broker requires of the branch broker to do. An even less restrictive option would be to leave it up to the principal broker; put in the rule that a principal broker and branch broker should have a written agreement detailing what supervision the branch broker is required to perform, and outside of the written agreement all

duties would default to the principal broker. This would allow the individuals companies to determine what they would do. Chair Little asked if the last option were adopted, who would the enforcement go after first for failure to supervise, the principal or branch broker. Director Stewart stated the first course of action would be to call in the branch broker because they would have primary supervision over that particular agent; if there was a specific agreement, or there wasn't a specific agreement the Division would go forward from there. If the agreement required the branch broker to do something then the branch broker would be on the hook. Director Stewart stated in this section there is also the safe haven language, which would also apply to a branch broker, where if there are policies and procedures in place and they are given to the agent and the broker wasn't involved in the action, then they wouldn't be on the hook for the violation. Chair Little stated in his mind when they contemplated expanding the branch broker ability to supervise the three branches, he thought the branch broker would assume the supervision responsibilities. In his mind, he was thinking more along the lines of the first option. Vice Chair Chapman stated she understands all business practices are set up differently, but in her mind the supervision requirement ultimately goes back to the principal broker. The principal broker can delegate or assign supervision to the branch broker, but ultimately it falls back onto them. Ms. Wright stated she feels the easy solution would be to add branch brokers to the requirements for principal brokers as many branch brokers currently handle all that now. Vice Chair Chapman stated some don't, and that's a business model choice. Commissioner Perry stated to the extent that they have supervision requirements, the branch broker should be held responsible. A lengthy discussion on finding a balance between supervision requirement, responsibility, and business practice choices continued. Commissioner Booth voiced his concern that many brokerages would not have written agreements outlining responsibility. The discussion continued. Shane Norris expressed that the principal broker would have responsibility and they could assign that responsibility to the branch broker. The discussion continued. Chair Little asked how the Commission could proceed. Director Stewart stated the Commission can give the Division some guidance on what they'd like to see and the Division can come up with language, or they can take time to think about it and discuss it next month. Commissioner Perry and Chair Little suggested that the Division interpret the discussion and present language at the next meeting. The discussion continued. Director Stewart proposed language at the end of the additional provisions section which states a branch broker is responsible for to supervise the same way a principal broker does with these provisions unless otherwise stated in a written agreement; they could also say a principal broker by delegating authority does not remove the responsibility to supervise the branch broker. There is a general consensus that the language is good. Mr. Barney cautioned that if it is left up to the principal broker to decide responsibility, there is going to be a normal tendency to push out responsibility if they can. Chair Little states that is where business model will come into play. Director Stewart noted that the rule still requires the principal broker to supervise the branch broker. Ms. Wright asked questions regarding the general business practice, regarding an outline of duties. It was stated that the employment agreements vary greatly from company to company. Commissioner

Perry noted that having this in the rule would make this tighter. Mr. Fagergren stated there will be a newsletter coming out discussing the new scenario. Since this is a new situation, there needs to be an understanding.

ENFORCEMENT REPORT – Kadee Wright

Ms. Wright reported in the month of May the Division received 34 complaints; opened 8 cases; closed 17 cases; leaving 400 open cases. There are 31 cases assigned to the AG's office.

Ms. Wright stated

Stipulations for Review

Russell F. Sorensen

J. Blake Priest

Samuel Rex, Jr

EDUCATION AND LICENSING REPORT – Mark Fagergren

Mr. Fagergren reported based on the numbers we are currently 3,000 individuals shy of the all-time high in 2007.

Mr. Fagergren reported the licensing staff is currently very involved in broker applications, with the market being strong. The review of those are quite time consuming to review if they comply with the experience requirements. He stated the Division sent out a handful of denials at the first of the month for incomplete broker experience. So far, those denials have not been appealed. Mr. Fagergren stated the Division has worked with the individual applicants to give them reasonable time to come up to speed. He stated working with these individuals is helping educate the industry about these requirements. He stated they are still finding individuals who are not listed on the agency agreements, but seeking credit for those transactions. He feels that these are fundamental requirements, and he is amazed at the lack of understanding in broker applicants. The process of reviewing the experience and allowing time for corrections was discussed.

HEARING OFFICER REPORT – Justin Barney

Mr. Barney has no stipulations to present for review. He stated there will be two licensing hearings held later in the meeting block today.

COMMISSION AND INDUSTRY ISSUES

Mr. Barney stated he is coordinating with the Department of Insurance regarding the title companies and earnest money issue. He has nothing to report yet. He noted there was a rule proposal sent to the Department of Insurance which Shane Norris drafted. He hopes to have more feedback for the next meeting.

Mr. Barney noted the Updated REPC is still pending with the AGs Office. Ms. Harris stated her supervisor requested that they have a decision regarding that by the end of June. Hopefully, there will be more information on that at the next meeting.

A brief recess was held from 10:01 a.m. to 10:12 a.m.

The meeting resumed at 10:12 a.m. for the Informal Hearing.

INFORMAL HEARING:

10:12 a.m. Jason Almond – Respondent
 Doug Gubler, Counsel for Mr. Almond

Mr. Almond's hearing concluded at 11:15 a.m.

A brief recess was held from 11:16 a.m. to 11:23 a.m.

The meeting resumed at 11:23 a.m. for the Informal Hearing.

INFORMAL HEARING:

11:23 a.m. Robert Blackwood – Respondent
 Tara Isaacson, Counsel for Mr. Blackwood
 Joseph B Holland and Shawn Burnett, witnesses for respondent

A brief recess was held from 12:23 p.m. to 12:28 p.m. The hearing resumed at 12:28 p.m.

Mr. Almond's hearing concluded at 12:37 p.m.

A motion was made to close the meeting for the sole purpose of discussing the character, professional competence or physical or mental health of an individual. Vote: Chair Little, yes; Vice Chair Chapman, yes; Commissioner Booth, yes; Commissioner Perry, yes. The motion was approved.

CLOSED TO PUBLIC

An Executive Session was held from 12:38 p.m. to 1:08 p.m.

OPEN TO PUBLIC

Results of Executive Session

Mr. Almond and Mr. Blackwood will be notified of the Commission's decision.

Results of Stipulations

Russell F. Sorensen – Approved with Division Concurrence

J. Blake Priest – Approved with Division Concurrence

Samuel Rex, Jr – Approved with Division Concurrence

A motion was made and seconded to adjourn the meeting. Vote: Chair Little, yes; Vice Chair Chapman, yes; Commissioner Booth, yes; Commissioner Perry, yes. The motion was approved. The meeting adjourned at 1:09 p.m.